



Blackbrook Audubon Society

November 30, 2002

Ms Molly Holt
U S Department of Commerce
1305 East-West Highway Room 61
Silver Springs MD 20910

Re: Sheldon Marsh Protection/Barnes Nursery issue.

Blackbrook Audubon, with over 600 members in Northeast Ohio, want to add our support to the State of Ohio, in denying Barnes Nursery the approval of the illegal dike and channel that affect the Sheldon Marsh Nature Preserve, a class III wetland. I understand that they Coastal Zone Management Act is now the controlling act, and that this requires that the existence of this channel would have to further the National interest, in this case, that of preserving wetlands. This construction certainly does not. It impacts a class III wetland adversely, one that is a very important bird migration area, a prime area of spring wildflowers, an ecosystem that borders Lake Erie, yet has forests, fields, marshes and coastal aspects. It is a complete and unusual State Nature Preserve in that it has all of these components.

The construction that was done in July 2000 did not have any input from the public, or from those responsible for maintaining the Preserve and wetlands. The subterfuge in creating this channel was certainly not in the national interest. The fact that permits, requested after the fact, have been denied, speaks to the illegality of both the action and the result. If the national interest had been properly served, hearings and public input sought, the channel would not exist now.

Further, if this project is permitted to remain and given legality, then wetlands protection in other places will also be threatened. The national interest in maintaining wetlands protection far outweighs the value of this to Barnes Nursery.

Our members visit Sheldon Marsh often, especially during spring bird migration, and want to see it protected. Any alteration that affects the natural water flow can alter the habitat. Our natural surroundings and places to see and enjoy are few, the opportunities for students to learn about nature, to appreciate and learn their future role in protecting these, are limited. We must make all efforts possible to protect and preserve those few that we have, and not let them be degraded by actions such happened here.

Sincerely

Mary Hoffman
Conservation Co-Chair
Blackbrook Audubon

3920 Princeton Blvd
South Euclid OH 44121

FINDLAY

THE UNIVERSITY OF FINDLAY

College of Sciences

November 26, 2002

Molly Holt
U.S. Dept. of Commerce, NOAA
1305 East-West Highway, Rm. 6111
Silver Spring, MD 20910

Dear Ms. Holt,

In the summer of 2001, I conducted a two-day Odonata (dragonfly/damselfly) survey in the Sheldon Marsh State Park Preserve (results attached). This was one of many surveys I have done over 38 years as a biologist.

From 1991, until the present, several colleagues and I have surveyed odonates for the state of Ohio. This statewide survey culminated in a publication, out this past summer (2002), *The Dragonflies and Damselflies of Ohio*, ISBN # 0-86727-145-0. These books are being sold at the Ohio Historical State Museum and in the Ohio Department of Natural Resources, state park book stores and visitors' centers. *The Dragonflies and Damselflies of Ohio* is pertinent to the Barnes Nursery versus Ohio case, because it is a body of research detailing wetland importance to living things, including man.

From the two days of observing and collecting at Sheldon Marsh, I was able to identify 12 species of Odonata. This number is very low because I did not get out in a boat and work the marsh. Everything I found was off the visitor trail or boardwalk. The actual number of odonate species is likely over 40, however, if further channel/dike construction is allowed by the Barnes Nursery, the water level drop will adversely affect the dragonflies and damselflies, with population decrease and diminished diversity. The Odonata are only one group of macroinvertebrates that will be damaged.

A colleague, Gwynne Rife, Ph.D., University of Findlay, and I conducted wetland macroinvertebrate studies for the Maumee Valley Resource, Conservation and Development Project, funded by the USEPA (1997-2000); and the Ohio State University, through the Great Lakes Protection Fund (2001-2002). In these two multi-year studies we found the single most critical factor influencing amount and diversity of macroinvertebrates to be water level. The food web of the vertebrates is based on the macroinvertebrates below them. When the macroinvertebrates go, then the fish, birds, mammals, etc. also go.

Sheldon Marsh is one wetland, (a State Park that we pay for with our taxes) that wildlife enthusiasts, sports people, water users -- both humans and animals -- cannot afford to further degrade. Too many of us in Ohio will be hurt, to the advantage of one business, if further channel and dike building is permitted.

Sincerely,



Dr. Dwight Moody, Professor
Biology Dept.

FINDLAY

THE UNIVERSITY OF FINDLAY

College of Sciences

Sheldon Marsh
Odonata Survey

Date Worked

Species Identified

3 July 2001

Celithemis elisa
Epithea princeps
Libellula luctuosa
L. lydia
Sympetrum rubicundulum

24 July 2001

Anax junius
Celithemis elisa
Epithea princeps
Erythemis simplicicollis
Libellula luctuosa
L. lydia
L. pulchella
Pachydiplax longipennis
Pantala hymenaea
Perithemis tenera
Sympetrum rubicundulum
Tramealacerata



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Huron, OH 44839

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15 November 2002

Molly Holt, Attorney-Advisor NOAA
Office of the Asst Genl Counsel of Ocean Services
1305 East-West Highway Rm 6111
Silver Springs MD 20910

RE: Barnes Nursery Project, Ohio

Dear Ms Holt:

You have received a number of considered communications regarding the appropriateness of denying dredging permits and other disruptions of Sheldon Marsh State Nature Preserve by Barnes Nursery.

To be brief, I wrote the initial environmental assessment of the property for the State of Ohio. From the information in my report, the State of Ohio purchased the Sheldon Marsh property and dedicated it as a state nature preserve. As you know, the majority of the large marsh is a Category III Wetland, the rarest. Sheldon Marsh is unique on Lake Erie, the last un-diked, large open water marsh on Lake Erie.

The illegal, un-permitted activities of Barnes Nursery have significantly degraded this wetland. Barnes' disruption or disturbance of marsh soils in the construction of irrigation waterways has allowed the initial invasion of alien and aggressive non-native plant species, a markedly destructive outcome. Until these disturbed sites are properly restored, the invasion of aggressive non-natives will continue to degrade the marsh habitat. These invasions were exactly what the permitting rules were written to prevent. Barnes' arrogant construction of the channels, with no authorization whatsoever, was and continues to be a flagrant violation of both the intent and written provisions of numerous state and federal wetlands protection laws.

Others have detailed the multiple, point by point violations that so far have been flagrantly conducted without penalty. As a practicing field biologist intimately familiar with Sheldon's Marsh State Nature Preserve, with over 30 years of professional experience with the Area's many upland and wetland ecosystems, I state with unparalleled expertise that the activities of Barnes Nursery in the Sheldon's Marsh State Nature Preserve wetlands was and continues to be a direct violation of both state and federal wetlands protection laws and regulations. The consideration of any action by Barnes other than complete restoration would be a legal, economic, regulatory, and ecological travesty. Barnes' actions must be found to be summarily illegal. Continuation of the firm's petitions lacks any reasonable basis whatsoever.

Sincerely,

John A. Blakeman
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2412 Scheid Rd.
Huron, OH 44839

419-433-5639 jablakeman@aol.com

Molly Holt, U.S. Department of Commerce (NOAA)
1305 East-West Highway, Room 6111
Silver Springs, MD 20910

Dear Ms. Holt:

Enclosed is a copy of the letter we sent electronically last week concerning the Barnes Nursery Sheldon Marsh coastal consistency appeal. Thank you for allowing us to comment on this very important wetlands issue.

Sincerely,
Pat Krebs and Pat Dwight
Co-Chairs of Friends of Sheldon Marsh
Firelands Audubon Society
Patricia S. Krebs

December 2, 2002

Dear Secretary of Commerce,

We the Friends of Sheldon Marsh a committee of Firelands Audubon Society of Erie and Huron counties of Ohio, ask you to support the Ohio Department of Natural Resources Coastal Zone Management Program's **DENIAL** of Barnes Nursery coastal consistency in the issue of the dike and channel dug in the Sheldon Marsh wetlands complex.

Sheldon Marsh, now a State Nature Preserve, was designated as such due in part to the work of Firelands Audubon founding members Dean Sheldon, John Blakeman, and Glen Bernhardt who did the scientific plant and animal studies. Firelands Audubon has for thirty years used this wonderful and rare naturally functioning barrier beach, lagoons coastal wetlands as a bird watching and natural history resource. The migrating neo-tropical songbirds, shorebirds, waterfowl, eagles, raptors and butterflies all use this territory for nesting, foraging and stopover after navigating Lake Erie. The piping plover endangered species habitat is protected here and many listed and threatened species are found. This wetlands has been designated an "Important Bird Area" by the National Audubon Society. This outstanding category III wetlands is one of few left intact in our state before the dike and channel were improperly dug in July 2000.

There is **NO national interest** furthered by this illegal dredge and fill in a quality wetland. In fact, it violates the clean water act. The Army Corps of Engineers (ACE) was wrong to issue a NWP27 permit for enhancement of a wetland that was not degraded. The permit showed a map with "irrigation channel" labeled but titled deep-water habitat and waterfowl nesting islands. This permit applied for one day and issued the next allowed no time for public scrutiny, and then circumvented all authorizing federal, state and local agencies specifically required on the ACE permitting letter. We feel the citizens of Ohio, who own the State Nature Preserve, were denied our due process of the laws in place to protect wetlands. The illegal east/ west dike and channel were dug 35 feet wider than the improper ACE permit specified. This width matches the north/south channel on Barnes property, which was constructed well in advance of the dike project and also has no permits. How can these activities be consistent with the coastal zone management plans of Ohio when there was never a Coastal Consistency Agreement signed by Barnes? When this construction began (during the growing season of 2000 without silt fence, concern for spawning fish, plant growth, sedimentation or turbidity and disruption of endangered species habitats) we questioned the ACE and were told to get information through FOIA while the work continued. At this point with public outrage and Agency involvement, the construction was stopped. The FOIA information we received included ACE threats of legal action against citizens, shred letters to US Fish and Wildlife, and lost computer records of meetings held. The authorizations of the limited partners, CCCMB, named on the permit were not available until October 2000 with one party denying participation, and withdrawing permission to channel through their easement. The ACE attempted compliance but withdrew the permit as "issued in error" in January 2001. The ACE continued their environmentally unfriendly efforts by acting as an applicant advocate offering, "to work with

you" through the 404 after-the-fact permit for the existing oversized, illegal project. We still feel the Army Corps' discounting of 1200 comments against this project and the granting of a provisional 404 permit while there was an ODNR Coastal Consistency denial on the table was inappropriate. The ACE's granting of the provisional permit the day before the Ohio EPA's public hearing on the water quality 401 permit application was also questionable. It is not in the national interest to have the Army Corps of Engineers allow wetlands degrading projects like this set a precedent for undermining our protective wetlands laws. Please uphold the State's coastal consistency denial and look into the ACE's permitting procedures especially at the Buffalo Corps District office.

The adverse coastal effects are numerous. The many scientists who wrote the EPA Coastal Guidelines and the state and federal biologists, scientists, and authorities have letters and documents on file attesting to the many reasons this and similar incursions into our few remaining wetlands are a danger. No plethora of reports by the appellant's hired consultants can change this. One private business should not rewrite the laws for their own benefit. We must all be stewards of the land and environment, and then work within our laws. Barnes Nursery's business decisions must consider the conditions the marsh and natural science have put on us all. Their historic use of water was for a much smaller number of acres and fewer gallons per day of pumped water. Their original water channel was in another location. The lake level fluctuations affecting the marsh waters are uncontrollable and do not give authority to one individual to re-direct water to only their cause, depleting the rest of the complex and changing hydrology. Coastal consistency alternatives do exist even though Barnes is resistant to the purchase of supplemental waters, new technology, deeper wells, buried pipelines, re-constructing retaining ponds and movement of stock in low lake level times.

Ohio's federal legislators, Senator George Voinovich, Senator Mike DeWine and Representative Marcy Kaptur are working to establish a National Wildlife Refuge in Lake Erie's Western Basin, and thus support the increasing national value of our natural coastal ecosystems. Sheldon Marsh in Sandusky Bay is the eastern most point of this area and must be protected and restored to its original condition **now**. Internationally, this area and refuge includes concerns from Canada and their coastal programs. Members of Firelands Audubon Friends of Sheldon Marsh are also working with the Belize Audubon Society in a program, "Birds with Two Countries". Preserve managers and teachers from Belize have visited this preserve to study the neo-tropical birds we share, and then present this information to schoolchildren in both countries. We need Sheldon Marsh State Nature Preserve to remain naturally functioning, and without human interventions, such as this dike and channel, so we can all continue to study and enjoy this rich, valuable, public natural resource.

Friends of Sheldon Marsh
Co chairs Pat Dwight and Pat Krebs
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